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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 471st MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 9 May 2001, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.471/Add.1.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Conclusions and recommendations concerning the third periodic report of Greece (continued) (CAT/C/39/Add.3; CAT/C/XXVI/Concl.2/Rev.1)

1. At the invitation of the Chairman, the delegation of Greece took places at the Committee table.

2. The CHAIRMAN read out the conclusions and recommendations of the Committee on the third periodic report of Greece (CAT/C/39/Add.3) contained in document CAT/C/XXVI/Concl.2/Rev.1.

3. Ms. GOUNARI (Greece) thanked the Committee for its efforts and said that her Government would give the Committee's recommendations its full attention in implementing the provisions of the Convention.

4. The delegation of Greece withdrew.

The meeting was suspended at 3.10 p.m. and resumed at 3.40 p.m.

Initial report of Brazil (continued) (CAT/C/9/Add.16)

5. At the invitation of the Chairman, the members of the delegation of Brazil took places at the Committee table.

6. Mr. PINTA GAMA (Brazil) thanked the Committee for its positive comments and said that the candour with which the report discussed the serious problems relating to torture in Brazil reflected the expectations of Brazilian society as well as public policy.

7. Turning to the observations made by Mr. Silva Henriques Gaspar, he said, with regard to article 2 of the Convention, that provisional detention, which must be ordered by a judge, lasted for 81 days, during which time the investigation took place. However, such detention could be extended beyond 81 days by the courts where necessary - for example in difficult cases, in cases involving many persons, if the accused's attorney seemed to be deliberately delaying the proceeding or in the event of force majeure. Detainees had the right to communicate with their families and with an attorney, although a judge could order a detainee held incommunicado for up to three days; such an order did not extend to the detainee's attorney.

8. The National Programme on Human Rights, launched in 1996, had been extremely important in raising awareness of human rights and serving as a catalyst for public policy, although not all of its objectives had been attained. A revised programme would soon be launched, containing new goals and addressing issues arising out of weaknesses in the first programme. The latter had dealt mostly with civil and political rights, whereas the new version

placed greater emphasis on economic, social and cultural rights. Many of the laws enacted during the previous five years had reflected the programme's objectives, including for example, the Torture Act.

9. With regard to article 3 of the Convention, he said that Brazilian refugee law reflected the 1951 Convention relating to the Status of Refugees and the definitions contained in the Protocol thereto. The National Commission for Refugees (CONARE) included representatives of the Ministries of Justice, Foreign Affairs, Labour, Health and Education, the Federal Police, civil society and the Office of the United Nations High Commissioner for Refugees (UNHCR). Refugee status could be claimed at any Federal Police office, and the claimant was interviewed by CONARE staff as well as representatives of Caritas Brasileira and the Brazilian Bar Association. The UNHCR representative in Brazil could be requested to provide information on the country of origin and an agreement for that purpose had been signed with the Brazilian Institute of International Relations. Another agreement had also been signed between Caritas Brasileira and UNHCR for the integration of refugees, who had access to the public health and education systems and could request reunification with their families if the family was in Brazil.

10. With regard to article 4 of the Convention, he said that the Government interpreted torture under the Torture Act to mean any act that might cause physical or mental suffering or be construed as violent or threatening. Since the Torture Act was relatively recent, there was no real jurisprudence on its interpretation by the courts, but judges were encouraged to apply that broad definition. The Act also covered all perpetrators envisaged by the Convention, and any public agent found guilty of torture would be subject to more severe penalties than private individuals. Between 1997 and April 2001, 258 charges had been brought under the Act, 56 cases were still being investigated, 16 cases had come to trial and there had been several convictions. As the Torture Act had only been promulgated in 1997 and criminal proceedings required four to five years on average, it was anticipated that the number of convictions would rise as trials were concluded.

11. The Government recognized the need to sensitize prosecutors and judges to the need to apply the Torture Act in order to combat impunity at both the State and Federal District levels, and had made that a priority of the national campaign against torture to be launched in June 2001. Public Prosecutors must play a greater role in police investigations, and enhancing that role was one of the priorities of the National Programme on Human Rights. A bill to bring human rights crimes, including torture, under federal jurisdiction as part of the proposed judicial reforms had been under consideration in Congress for a number of years. The bill would allow the Attorney-General to request the Superior Court of Justice to transfer jurisdiction for crimes involving serious human rights violations to the federal courts at any moment of an inquiry or proceeding, with a view to ensuring Brazil's compliance with its international human rights treaty obligations.

12. With regard to article 5 of the Convention, he said that the provisions of the Torture Act could also be applied to crimes of torture committed outside Brazil where the victim was a Brazilian citizen or the perpetrator was within an area under Brazilian jurisdiction. The Brazilian Penal Code also recognized the principle of extraterritoriality and allowed for the perpetrator of a crime under Brazilian law committed outside Brazilian territory to be prosecuted in Brazil.

13. Turning to articles 6 to 9 of the Convention, he said that Brazil, as a party to the Vienna Convention on Consular Relations, was bound to allow a detainee to communicate immediately with the nearest appropriate representative of the State of which he was a national. Although the Constitution forbade the extradition of Brazilian nationals, they could be tried in Brazil for crimes recognized as such under Brazilian law even if those crimes had been perpetrated abroad, just as foreigners in Brazil could be tried in Brazil for crimes committed abroad (art. 7). Brazil had signed judicial cooperation agreements on the exchange of information with several countries, which could be invoked in cases of torture committed abroad.

14. With regard to article 10 of the Convention, he said that training and capacity-building would be one of the key elements of the national campaign against torture. Training seminars would be organized for the legal community; in addition, human rights courses for the police forces would include instruction in modern investigative techniques as a substitute for torture. Torture prevention would be discussed during the forthcoming mission of the United Nations High Commissioner for Human Rights to Brazil, and her assistance and guidance would be sought in organizing those courses. Despite the serious public security situation, efforts to combat criminality must be compatible with human rights concerns. In fact, the national public security plan and the National Programme on Human Rights were to some extent complementary, and some of the national public security budget was being used to finance human rights-related social projects of a preventive nature.

15. With regard to article 11 of the Convention, he said that the current prison population was 223,000 persons held in 862 detention facilities, including 161,000 persons in penitentiaries and 62,000 in other facilities. Of the total number of detainees, 150,000 had already been convicted and 74,000 were in provisional detention; 214,000 were men and fewer than 10,000 women. Over 40 per cent of Brazil's prison population was concentrated in the State of São Paulo, where the State Government, supported by the Ministry of Justice, was planning to build new remand facilities to allow 24,000 detainees to be transferred from police station cells, many of which - fortunately - were being closed down. Other steps taken to reduce prison overcrowding and ensure that all detainees were given the guarantees of article 5 of the Constitution included the establishment of alternative sentencing centres, collective court proceedings aimed at eliminating the backlog in criminal cases and the creation of special courts to deal with drug addicts.

16. With regard to articles 12 and 13 of the Convention, and specifically the machinery for outside investigation of police abuses, the expansion of the police ombudsman offices should help to reduce impunity. Currently there were police ombudsmen in 10 Brazilian states, and there were plans to establish them in the remaining 16 states and the Federal District.

17. In cases involving torture, the police officers involved were provisionally suspended, until the administrative legal requirements demanded by due process were met. However, the Brazilian legal system also provided for appeals that would allow the accused to resume their functions until a decision on the appeal was taken.

18. Police inquiries must be in compliance with the Code of Criminal Procedure. The National Forum of Police Ombudsmen had proposed a bill on the unification of the military and civil police forces that contained a provision abolishing police inquiries and transferring all powers of investigation to the Public Prosecutor's Office.

19. In connection with article 14 of the Convention, Brazilian law allowed any citizen who had been a victim of torture or other violation of civil and political rights by public officials to file a civil action seeking compensation. Under Act No. 9140/95, compensation had been granted to the families of those who had died or disappeared during the military regime, including cases where the victims had been previously subjected to torture for political reasons. Regardless of the outcome of any civil proceedings brought by individuals, the Executive Branch had the discretionary power to propose compensation bills to Congress. Since only the Federal Government was signatory to multilateral treaties, however, and since individual states had their own investigation and prosecution authorities, compensation proceedings brought against state Governments were complex. In an attempt to address the issue the National Secretariat for Human Rights had appointed a group of jurists to discuss the possible establishment of a legal mechanism through which international decisions involving state liability could be enforced and the Federal Government could be reimbursed for compensation paid to victims.

20. The two cases of compensation mentioned in the report (paras. 170-171) were not exceptions but rather part of a trend that had been given impetus by Brazil's recognition of the compulsory jurisdiction of the Inter-American Court of Human Rights in 1998 and the negotiation of amicable settlements with the Inter-American Commission on Human Rights. In addition to the case mentioned in paragraph 170 of the report, there were six amicable settlements under negotiation for cases of police violence in the States of Rio de Janeiro and Pernambuco and one case of forced labour in the State of Pará. His Government was also giving serious consideration to recognizing the competence of the Committee under article 22 of the Convention. The question of the rehabilitation of torture victims still needed to be addressed by the Government in cooperation with international and non-governmental organizations (NGOs) having expertise in the field.

21. Turning to article 15 of the Convention, he said that any confession made during a police inquiry or at a subsequent stage was valid only if confirmed by both a judge and the accused, in accordance with article 195 of the Code of Criminal Procedure; and any evidence obtained through illegal methods, including torture, was invalid under article 5 of the Constitution.

22. Regarding article 16, he said that Brazil was undergoing a public security crisis in which the punishment of even petty crimes tended to be more severe, which partly explained the high number of detainees and the prison overcrowding. The excessive duration of judicial proceedings, another problem, should be minimized when the constitutional amendment on the reform of the judiciary currently under consideration in Congress was adopted.

23. The increase in the female prison population in the last 20 years was due mainly to the involvement of women in drug smuggling. The national penitentiary system had not been prepared for such an influx, and many female inmates had been incarcerated in improvised facilities. However, new women's prison facilities were being built, which were equipped for spousal visits and infant care. On the general issue of visits by relatives of inmates, the National

Secretariat for Human Rights was strongly urging that the current humiliating search system in prison facilities should be replaced by a system in which inmates alone were searched after visits and metal detectors were installed in all prisons.

24. It was unfortunately true that women, prisoners suffering from human immunodeficiency virus and acquired immune deficiency syndrome (HIV/AIDS), homosexuals, the mentally and physically impaired, transvestites and rapists suffered discrimination in the criminal justice system. To tackle the incidence of HIV/AIDS in prison facilities, largely the result of needle-sharing among drug users, the Federal Government was fostering prevention, diagnosis and assistance services to HIV/AIDS patients. In addition, the Ministries of Health and Justice were carrying out joint programmes to train prison guards and raise prisoner awareness of the pandemic and ways of preventing it. Most prison facilities distributed contraceptives to detainees before spousal visits, and the entire prison population had access to HIV medication through the public health system.

25. The lack of medical assistance in prisons was a major problem, and the Government had the duty to overcome the reluctance of doctors to serve in prisons. The Ministry of Justice was considering a cooperative agreement with medical schools, which would provide the necessary services to detainees. The Public Prosecutor's Office was currently working with the Ministry of Health to equip all prisons with basic medical units. When overcrowding ceased to be a problem, a more permanent solution would be found. In the meantime, doctors who refused to assist prisoners or to certify the practice of torture were punishable by the regional or national medical councils, the bodies that certified members of the medical profession.

26. The Federal Government had officially condemned torture and as a matter of policy had dismissed any public officials accused of committing torture during the military regime, and it would continue to do so. The national campaign against torture would stress the fact that torturers should be expelled also from the police and other State agencies whenever accusations were deemed plausible. Torture involving military personnel was covered by the Torture Act. He was not aware of all the cases of alleged torture in the military raised by the NGO Tortura Nunca Mais; to his knowledge, the first case involving torture in a military facility in Rio de Janeiro had just been brought to trial.

27. The national campaign against torture would emphasize prevention through training of the legal community, the police and prison guards, increased oversight of places of detention and a media campaign to sensitize and mobilize all sectors of society against torture.

28. With regard to the title "Federal Prosecutor for Citizens' Rights", citizenship was an inclusive concept in Brazil, embracing socially disadvantaged and marginalized groups, and the Prosecutor protected the rights of all, regardless of national origin. He or she was appointed by the Attorney-General from among the Deputy Attorneys-General and had representatives in every state.

29. A national campaign was being launched to change the tendency to associate the crime of torture solely with abuses committed under the military regime. It was hoped to involve civil society in the fight against torture by drawing attention to acts of torture committed against prisoners and suspected criminals.

30. The delay in the submission of Brazil's initial report to the Committee was due to the fact that the Government had preferred to wait until the Torture Act had been adopted and implemented for a few years before submitting the report. Subsequent reports would keep to the proper schedule. Also, his Government did not have an expert group responsible for the preparation of reports to treaty bodies, and delays were the price it paid for its extensive ratification of international and regional instruments. It could probably benefit from the courses provided by international organizations on the preparation of such reports, although Brazil's initial report to the Committee had not been produced simply by bureaucrats but by an independent official human rights body. The Government would also seriously consider the suggestion that formal consultations should be held with appropriate NGOs when preparing reports. The Centre for Studies on Violence at the University of São Paulo, an independent think tank, had collaborated with the National Secretariat for Human Rights in preparing Brazil's initial report to the Committee.

31. Paragraph 135 of the report should be amended to read "Another problem of the Brazilian prison system was the 58,000 convicted prisoners who were serving sentences in police stations and public jails."

32. The statute of limitations in respect of the crimes of torture and murder in the Penal Code was 12 years and 20 years respectively. The issue had never been addressed by the Inter-American Court of Human Rights, and no cases concerning Brazil had been brought before the Court thus far.

33. On the question of the 1979 Amnesty Law, he noted that crimes of torture committed before 1989 could not be prosecuted in Brazil. The authorities were aware of the recommendations of the Inter-American Commission on Human Rights regarding the Uruguayan Amnesty Law. Moreover, the Commission had recently declared the case of the Araguaia guerrilla movement, which concerned events in the 1970s, admissible. The 1995 law concerning persons who had disappeared for political reasons stated that its implementation was to be governed by the principle of reconciliation and national peacemaking laid down in the Amnesty Law.

34. Mr. SILVA HENRIQUES GASPAR (Country Rapporteur) said he agreed with the delegation that the words "violence or serious threats" used in the definition of the crime of torture in the Brazilian Torture Act could refer either to physical or to mental violence. He was somewhat surprised, however, to hear that the authorities were seeking to have such an interpretation incorporated in the relevant jurisprudence: surely that was a matter for the judiciary.

35. He would be interested to hear whether a final verdict nad been returned in the 16 cases concerning acts of torture mentioned by the delegation and whether the accused were all law enforcement officers.

36. Mr. GONZÁLEZ POBLETE (Alternate Country Rapporteur), noting that the maximum period of pre-trial detention was 81 days, asked whether that included time spent in police custody. How long could a person be held by the police before being brought before a judge?

37. He would welcome additional information about the police ombudsmen who were involved in investigating alleged cases of torture. Were they independent of the police force and capable of carrying out quick, thorough and impartial investigations?

38. Ms. GAER inquired about the system for monitoring inter-prisoner violence, including sexual violence.

39. She understood that the authorities were not familiar with the allegations of torture in the military that she had mentioned the previous day. She would be pleased to share that information with the delegation and to provide it with the list of 444 alleged torturers from the period of military rule to which the Special Rapporteur on torture had referred.

40. Mr. PINTA GAMA (Brazil) said that the effort by the authorities to influence jurisprudence regarding the definition of torture had taken the form of information campaigns, seminars, publications and other initiatives designed to change attitudes and ensure more stringent application of the law.

41. Various stages had been reached in the 16 legal proceedings concerning acts of torture. In the State of Alagoas one person had been convicted and an appeal procedure was under way. In the State of Bahia there had been one conviction. In the State of Espírito Santo the accused had been acquitted. In the State of Goiás there had been one conviction, in the State of Mato Grosso do Sul three convictions, in the State of Paraíba two convictions, in the State of Paraná two convictions and in the State of São Paulo one conviction. Legal proceedings were still under way in the other cases. The small number of cases was due to the fact that the law invoked had only recently been enacted.

42. The maximum period of pre-trial detention of 81 days included time spent in police custody.

43. The police ombudsmen were completely independent of the police force. The National Secretariat for Human Rights had therefore decided to support the National Forum of Police Ombudsmen, which also served as an advisory body on policy regarding, for example, the fight against violence. It was hoped in time to extend the ombudsman system to all states in the country.

44. He was unable to describe in detail how inter-prisoner violence was dealt with. Responsibility lay, in principle, with the prison authorities and some monitoring was undertaken by civil society through NGOs.

45. He had heard of the allegations of torture in the military. Legal action had certainly been taken in two cases but he was not sure about the others. He would be pleased to receive the list of 400 alleged torturers mentioned by Ms. Gaer.

The public part of the meeting rose at 5.10 p.m.